State of Arizona Senate Forty-fifth Legislature First Regular Session 2001

CHAPTER 259

## **SENATE BILL 1500**

AN ACT

AMENDING TITLE 33, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; RELATING TO COMMERCIAL REAL ESTATE BROKER LIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- j -

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 33, chapter 7, Arizona Revised Statutes, is amended by adding article 10, to read:

ARTICLE 10. COMMERCIAL REAL ESTATE BROKER LIENS

## 33-1071. Commercial real estate broker lien; definition

- A. EXCEPT AS PRESCRIBED BY SUBSECTION C, AN EMPLOYING REAL ESTATE BROKER PURSUANT TO TITLE 32, CHAPTER 20 HAS A LIEN AGAINST REAL PROPERTY FOR THE AMOUNT OF COMPENSATION THAT IS AGREED TO BE PAID TO THE BROKER BY THE OWNER OF THE REAL PROPERTY FOR THE BROKER'S SERVICES IN THE LEASE OR RENTAL OF THE REAL PROPERTY. THE LIEN IS CREATED ONLY IF ALL OF THE FOLLOWING APPLY:
- 1. THERE IS A WRITTEN AGREEMENT BETWEEN THE BROKER AND THE OWNER OF THE REAL PROPERTY THAT PROVIDES FOR THE PAYMENT OF A COMMISSION OR OTHER COMPENSATION TO THAT BROKER FOR THE BROKER'S SERVICES IN A REAL ESTATE TRANSACTION AND THAT AGREEMENT DISCLOSES IN THE SAME SIZE TYPE AS THE MAJORITY OF THE REMAINDER OF THE AGREEMENT ABOVE THE PORTION OF THE AGREEMENT CALLING FOR THE SIGNATURE OF THE OWNER OF THE REAL PROPERTY THAT THE FAILURE TO PAY THE AGREED UPON COMMISSION OR COMPENSATION MAY GIVE RISE TO LIEN RIGHTS AS PROVIDED BY THIS ARTICLE.
- 2. THE BROKER PRODUCES A PERSON OR ENTITY THAT IS READY, WILLING AND ABLE TO LEASE OR RENT THE REAL PROPERTY ON THE TERMS PROVIDED IN THE WRITTEN AGREEMENT BETWEEN THE BROKER AND THE OWNER OF THE REAL PROPERTY OR ON TERMS THAT ARE OTHERWISE ACCEPTABLE TO THE OWNER AS EVIDENCED BY A WRITTEN INSTRUMENT THAT IS SIGNED BY THE OWNER.
  - 3. THE BROKER FULLY COMPLIES WITH SECTIONS 33-1072 AND 33-1073.
- 4. ALL OF THE CONDITIONS FOR THE PAYMENT OF THE COMMISSION OR OTHER COMPENSATION DESCRIBED IN THE WRITTEN AGREEMENT HAVE BEEN SATISFIED.
- B. MECHANICS' AND MATERIALMEN'S LIEN RIGHTS ESTABLISHED PURSUANT TO TITLE 33, CHAPTER 7, ARTICLE 6 HAVE PRIORITY OVER THE LIEN RIGHTS CREATED BY THIS ARTICLE.
- C. CONSENSUAL LIENS, MORTGAGES AND DEEDS OF TRUST THAT ARE RECORDED BEFORE THE RECORDATION OF THE BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN HAVE PRIORITY OVER THE LIEN RIGHTS CREATED BY THIS ARTICLE AND OVER THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN RECORDED PURSUANT TO THIS ARTICLE.
- D. REAL PROPERTY IS NOT SUBJECT TO A COMMERCIAL REAL ESTATE BROKER LIEN PURSUANT TO THIS ARTICLE IF EITHER OF THE FOLLOWING APPLY:
- 1. THE REAL PROPERTY IS CONVEYED TO A BONA FIDE PURCHASER FOR VALUE BEFORE THE RECORDATION OF A BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN.
- 2. IT IS ENCUMBERED BY A BONA FIDE LENDER FOR VALUE BEFORE THE RECORDATION OF A BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN.
- E. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, THE LIEN RIGHTS PROVIDED BY THIS ARTICLE APPLY TO ALL COMMERCIAL REAL PROPERTY AND DO NOT APPLY TO ANY TRANSACTION INVOLVING EITHER OF THE FOLLOWING:
  - 1. RESIDENTIAL REAL PROPERTY WITH FEWER THAN FIVE RESIDENTIAL UNITS.

- 1 -

- 2. REAL PROPERTY ON WHICH SINGLE FAMILY MOBILE HOME LOTS, MANUFACTURED HOUSING LOTS. RESIDENCES OR CONDOMINIUMS ARE SOLD UNIT BY UNIT.
- F. FOR PURPOSES OF THIS ARTICLE, "REAL PROPERTY" OR "SUBJECT REAL PROPERTY" MEANS THE REAL PROPERTY INTEREST THAT IS OWNED BY THE PERSON WHO IS THE PARTY TO THE AGREEMENT WITH THE BROKER AS PRESCRIBED BY THIS SECTION.

33-1072. <u>Lien attachment: notice of commercial real estate</u> broker lien: notice to owner

- A. A LIEN PURSUANT TO THIS ARTICLE ATTACHES TO THE SUBJECT REAL PROPERTY WHEN ALL OF THE FOLLOWING OCCUR:
- 1. THE BROKER PRODUCES A PERSON OR ENTITY THAT IS READY, WILLING AND ABLE TO LEASE OR RENT THE REAL PROPERTY ON THE TERMS PROVIDED IN THE WRITTEN AGREEMENT BETWEEN THE BROKER AND THE OWNER OF THE REAL PROPERTY OR ON TERMS THAT ARE OTHERWISE ACCEPTABLE TO THE OWNER AS EVIDENCED BY A WRITTEN INSTRUMENT THAT IS SIGNED BY THE OWNER.
  - 2. THE BROKER FULLY COMPLIES WITH SUBSECTION B OF THIS SECTION.
- 3. THE BROKER RECORDS A DOCUMENT ENTITLED "NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN" IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OR COUNTIES IN WHICH THE SUBJECT REAL PROPERTY IS LOCATED. THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN SHALL BE RECORDED AS FOLLOWS:
- (a) EXCEPT AS PROVIDED IN SUBDIVISION (b), IF THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN IS BASED ON A LEASE OR RENTAL OF THE REAL PROPERTY, THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN SHALL BE RECORDED WITHIN NINETY DAYS AFTER THE TENANT TAKES POSSESSION OF THE LEASED PREMISES.
- (b) IF THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN IS BASED ON COMPENSATION THAT IS TO BE PAID IN INSTALLMENTS AND ANY OF THOSE INSTALLMENTS ARE DUE AFTER THE LEASE OR RENTAL OF THE REAL PROPERTY, THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN SHALL BE RECORDED WITHIN NINETY DAYS AFTER THE TENANT TAKES POSSESSION OF THE REAL PROPERTY AND IS VALID ONLY TO THE EXTENT THAT MONIES REMAIN UNPAID BY THE OWNER OF THE REAL PROPERTY TO THE BROKER.
- B. ON RECORDING THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN, THE BROKER'S LIEN IS PERFECTED.
- C. NOT LATER THAN FIFTEEN DAYS BEFORE THE DATE THAT THE TENANT TAKES POSSESSION OF THE LEASED PREMISES, THE BROKER SHALL RECORD A DOCUMENT ENTITLED "BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN" IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED AND SHALL DELIVER PERSONALLY OR BY FIRST CLASS MAIL A COPY OF THE BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN TO THE OWNER OF THE REAL PROPERTY INTEREST. THE BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN SHALL STATE THAT THE BROKER IS ENTITLED TO COMPENSATION UNDER THE TERMS SET FORTH IN THE WRITTEN AGREEMENT BETWEEN THE BROKER AND THE OWNER AND THAT THE BROKER INTENDS TO CLAIM A LIEN ON THE REAL PROPERTY. THE BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN SHALL INCLUDE ALL OF THE INFORMATION PRESCRIBED BY SECTION 33-1073, SUBSECTION A AND SHALL BE ENTITLED "BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN". THE BROKER'S FAILURE TO RECORD THE BROKER'S PRELIMINARY NOTICE OF

- 2 -

INTENT TO LIEN WITHIN THE TIME PRESCRIBED BY THIS SUBSECTION EXTINGUISHES THE BROKER'S LIEN RIGHTS.

33-1073. Contents of notice of lien; license number; verification

- A. THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN SHALL INCLUDE ALL OF THE FOLLOWING:
- 1. THE NAME AND THE ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS OF THE BROKER WHO CLAIMS THE LIEN AND THE BROKER'S REAL ESTATE LICENSE NUMBER.
  - 2. THE NAME AND THE MAILING ADDRESS OF THE OWNER OF THE REAL PROPERTY.
  - 3. THE REAL PROPERTY INTEREST THAT IS OWNED BY THE OWNER.
  - 4. THE AMOUNT OF THE LIEN.
- 5. THE LEGAL DESCRIPTION OF THE REAL PROPERTY THAT IS THE SUBJECT OF THE LIEN.
  - 6. THE STREET ADDRESS OF THE REAL PROPERTY, IF ANY.
- 7. THE STATEMENT THAT THE BROKER WHO CLAIMS THE LIEN IS ENTITLED TO COMPENSATION FROM THE OWNER OF THE REAL PROPERTY.
- 8. THE NOTARIZED SIGNATURE OF THE REAL ESTATE BROKER THAT AVOWS THAT BASED ON INFORMATION AND BELIEF THE CONTENTS OF THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN ARE TRUE AND ACCURATE.
- B. THE WORDS "UNKNOWN" OR "NOT AVAILABLE" AND SIMILAR TERMS MAY NOT BE USED IN LIEU OF THE INFORMATION PRESCRIBED BY SUBSECTION A, AND ANY USE OF THOSE TERMS IN THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN OR BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN INVALIDATES THE COMMERCIAL REAL ESTATE BROKER LIEN.
  - 33-1074. Foreclosure; limitation of action; attorney fees
- A. A COMMERCIAL REAL ESTATE BROKER LIEN RECORDED PURSUANT TO THIS ARTICLE IS ENFORCEABLE BY FORECLOSURE ACTION IN SUPERIOR COURT AS IF THE LIEN WERE A MORTGAGE.
- B. A LIEN PURSUANT TO THIS ARTICLE IS ONLY VALID FOR TWO YEARS AFTER THE DATE THAT IT IS RECORDED UNLESS AN ACTION IS BROUGHT WITHIN THAT TWO YEARS TO ENFORCE THE LIEN AND A NOTICE OF PENDENCY OF THE ACTION IS RECORDED PURSUANT TO SECTION 12-1191 IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED WITHIN FIVE DAYS AFTER FILING THE ACTION.
- C. IN ANY ACTION TO FORECLOSE A COMMERCIAL REAL ESTATE BROKER LIEN, THE PREVAILING PARTY SHALL BE AWARDED COSTS AND REASONABLE ATTORNEY FEES.
  - 33-1075. Satisfaction of lien; damages
- A. ON SATISFACTION OF ANY LIEN ESTABLISHED PURSUANT TO THIS ARTICLE, THE LIENHOLDER SHALL RECORD A SATISFACTION OF THE LIEN WITHIN THIRTY DAYS. THE SATISFACTION SHALL BE IN THE FORM PRESCRIBED BY SECTION 11-480. A LIENHOLDER WHO FAILS TO RECORD A SATISFACTION OF LIEN PURSUANT TO THIS SECTION IS SUBJECT TO THE PENALTIES PRESCRIBED BY SECTION 33-712.
- B. A BROKER SHALL RECORD A WAIVER AND RELEASE OF CLAIM OF LIEN THAT EXTINGUISHES THE BROKER'S LIEN RIGHTS ON EITHER OF THE FOLLOWING:

- 3 -

- 1. WITHIN THIRTY DAYS AFTER SATISFACTION OF A BROKER'S CLAIM OF LIEN ARISING PURSUANT TO THIS ARTICLE IF SATISFACTION OCCURS BEFORE RECORDING A NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN.
- 2. WITHIN TEN DAYS AFTER RECEIPT OF A WRITTEN REQUEST FROM THE OWNER AND IF THE BROKER FAILS TO RECORD A NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN WITHIN THE TIME PERIOD PRESCRIBED BY SECTION 33-1072, SUBSECTION A, PARAGRAPH 3, SUBDIVISION (a) OR (b).
- C. A BROKER WHO IS REQUIRED TO RECORD A WAIVER AND RELEASE OF CLAIM OF LIEN BY SUBSECTION B OF THIS SECTION AND WHO FAILS TO RECORD A WAIVER IS SUBJECT TO THE PENALTIES PRESCRIBED BY SECTION 33-712.
- D. A WAIVER AND RELEASE OF CLAIM OF LIEN IS SUFFICIENT IF IT COMPLIES WITH OTHER APPLICABLE LAWS AND IF IT IS IN SUBSTANTIALLY THE FOLLOWING FORM:
  WAIVER AND RELEASE OF CLAIM OF LIEN

I (WE) HEREBY UN	CONDITIONALLY WAIVE	E AND RELEAS	SE ANY CLAIM
OF LIEN EVIDENCED BY	THE RECORDING OF A	"BROKER'S	<b>PRELIMINARY</b>
NOTICE OF INTENT TO LI	EN" OR "NOTICE OF	COMMERCIAL	REAL ESTATE
BROKER LIEN", OR BOTH	, RECORDED ON(	DATE) I	N DOCKET OR
BOOK AT PAG	E, OR INST	RUMENT NUMB	ER,
RECORDS OF	_ COUNTY, ARIZONA.		
DATED:			
	SIGNATURE		

(ACKNOWLEDGMENT)

33-1076. <u>Discharge of commercial real estate broker's liens:</u>
bond; limitations of actions; discharge of surety;
judgment

- A. AFTER PERFECTION OF A LIEN PURSUANT TO THIS ARTICLE, AN OWNER, INCLUDING ANY PERSON WHO HAS A LEGAL OR EQUITABLE INTEREST IN THE LAND THAT IS SUBJECT TO THE LIEN, A MORTGAGEE OR ANY OTHER LIEN CREDITOR MAY, EITHER BEFORE OR AFTER THE COMMENCEMENT OF AN ACTION TO FORECLOSE THE LIEN, CAUSE TO BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY IN WHICH THE LAND IS LOCATED A SURETY BOND IN THE FORM DESCRIBED IN SUBSECTION B OF THIS SECTION, TOGETHER WITH A POWER OF ATTORNEY DISCLOSING THE AUTHORITY OF THE PERSON EXECUTING THE BOND ON BEHALF OF THE SURETY. ON THE RECORDATION OF THE BOND, THE PROPERTY SHALL BE DISCHARGED OF THE LIEN WHETHER OR NOT A COPY OF THE BOND IS SERVED ON THE CLAIMANT OR THE CLAIMANT PERFECTS THE CLAIMANT'S RIGHTS AGAINST THE BOND.
- B. A SURETY BOND TO DISCHARGE A LIEN PERFECTED UNDER THIS ARTICLE SHALL BE EXECUTED BY THE PERSON SEEKING TO DISCHARGE THE LIEN, AS PRINCIPAL, AND BY A SURETY COMPANY OR COMPANIES HOLDING A CERTIFICATE OF AUTHORITY TO TRANSACT SURETY BUSINESS IN THIS STATE THAT IS ISSUED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1. THE BOND IS FOR THE SOLE PROTECTION OF THE CLAIMANT WHO PERFECTED THE LIEN. NOTWITHSTANDING ANY OTHER STATUTE, THE SURETY BOND SHALL NOT BE EXECUTED BY INDIVIDUAL SURETY OR SURETIES, EVEN IF THE REQUIREMENTS OF SECTION 7-101 ARE SATISFIED. THE BOND SHALL BE IN AN AMOUNT EQUAL TO ONE AND

- 4 -

ONE-HALF TIMES THE CLAIM SECURED BY THE LIEN AND SHALL BE CONDITIONED FOR THE PAYMENT OF THE JUDGMENT THAT WOULD HAVE BEEN RENDERED AGAINST THE PROPERTY FOR THE ENFORCEMENT OF THE LIEN. THE LEGAL DESCRIPTION OF THE PROPERTY AND THE DOCKET AND PAGE OF THE LIEN SOUGHT TO BE DISCHARGED SHALL BE SET FORTH IN THE BOND.

- C. ON RECORDATION OF THE BOND WITH THE COUNTY RECORDER, THE PRINCIPAL ON THE BOND SHALL CAUSE A COPY OF THE BOND TO BE SERVED WITHIN A REASONABLE TIME ON THE LIEN CLAIMANT, AND IF A SUIT IS THEN PENDING TO FORECLOSE THE LIEN, THE CLAIMANT, WITHIN NINETY DAYS AFTER RECEIPT OF THE BOND, SHALL CAUSE PROCEEDINGS TO BE INSTITUTED TO ADD THE SURETY AND THE PRINCIPAL AS PARTIES TO THE LIEN FORECLOSURE SUIT.
- D. THE BOND SHALL BE DISCHARGED AND THE PRINCIPAL AND SURETIES SHALL BE RELEASED ON ANY OF THE FOLLOWING:
- 1. THE FAILURE OF THE LIEN CLAIMANT TO COMMENCE A SUIT WITHIN THE TIME ALLOWED PURSUANT TO SECTION 33-1074.
- 2. FAILURE OF THE LIEN CLAIMANT TO NAME THE PRINCIPAL AND SURETIES AS PARTIES TO THE ACTION SEEKING FORECLOSURE OF THE LIEN IF A COPY OF THE BOND HAS BEEN SERVED ON THE CLAIMANT. IF THE BOND IS SERVED ON THE CLAIMANT FEWER THAN NINETY DAYS AFTER THE DATE THE CLAIMANT WOULD BE REQUIRED TO COMMENCE AN ACTION PURSUANT TO SECTION 33-1074, THE CLAIMANT HAS NINETY DAYS FROM THE DATE OF RECEIVING A COPY OF THE BOND TO ADD THE PRINCIPAL AND THE SURETIES AS PARTIES TO THE LIEN FORECLOSURE SUIT.
- 3. THE DISMISSAL OF THE FORECLOSURE SUIT WITH PREJUDICE AS TO THE CLAIMANT OR THE ENTRY OF JUDGMENT IN A SUIT AGAINST THE CLAIMANT.
- E. IN AN ACTION TO FORECLOSE A LIEN UNDER THIS ARTICLE, IF A BOND HAS BEEN FILED AND SERVED AS PRESCRIBED BY THIS SECTION A JUDGMENT FOR THE CLAIMANT ON THE BOND SHALL BE AGAINST THE PRINCIPAL AND THE PRINCIPAL'S SURETIES AND SHALL NOT BE AGAINST THE PROPERTY.
- F. IF A COPY OF THE BOND IS NOT SERVED ON THE CLAIMANT AS PROVIDED IN SUBSECTION C OF THIS SECTION, THE CLAIMANT HAS SIX MONTHS AFTER THE DISCOVERY OF THE BOND TO COMMENCE AN ACTION ON THE BOND, EXCEPT THAT NO ACTION MAY BE COMMENCED ON THE BOND AFTER TWO YEARS FROM THE DATE IT WAS RECORDED AS PROVIDED IN THIS SECTION.
- G. THE COUNTY RECORDER OF THE COUNTY IN WHICH THE BOND AND CONTRACT ARE RECORDED SHALL INDEX THE BOND AND CONTRACT UNDER THE INDEX CLASSIFICATION IN WHICH COMMERCIAL REAL ESTATE BROKER LIENS ARE RECORDED.

APPROVED BY THE COVERNOR APRIL 26, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2001.

Passed the House April 17, 2001,	Passed the Senate March 5, 20 01
Passed the House April 17, 2001, by the following vote: 54 Ayes,	by the following vote: Ayes,
ONays, Not Voting	Nays,Not Voting
Atten.	President of the Senate
Speaker of the House  Mornan L. More	Chamins Relliston
Chief Clerk of the House	Secretary of the Senate
OFFIC	EPARTMENT OF ARIZONA E OF GOVERNOR
This Bill was rec	ceived by the Governor this
	of, 20,
at	o'creek M.
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	Secretary to the Governor
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Governor of Arizons	
	EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF SECRETARY OF STATE
	This Bill was received by the Secretary of State
	thisday of, 20,
S.B. 1500	
	ato'clockM.

Secretary of State

## SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

	Passed the Senate Quil 24, 2001,
	by the following vote: Ayes,
	Nays, Not Voting  President of the Senate
	Secretary of the Senate
EXE	CUTIVE DEPARTMENT OF ARIZONA OFFICE OF GOVERNOR
	Bill was received by the Governor this  24 day of April, 200/,
at_	3.28 o'clock M.  Wardy Canusa Secretary to the Governor 0
APPROVED THIS	day of
april	, 20 <u>0</u> /,
at	<u></u> ★ M.
January See See	ee .
•	EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF SECRETARY OF STATE
	This Bill was received by the Secretary of State this 27 day of April, 2001,
S.B. 1500	at 3:45 o'clock M.
	Betrey Bayles
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